

REMARKS

In accordance with the foregoing, claims 1-9 and 11 have been amended. Claims 12-14 have been added.

Claims 1-14 are pending and under consideration.

REJECTION UNDER 35 U.S.C. § 103:

In the Office Action, at page 2, claims 1-5 and 7 were rejected under 35 U.S.C. § 103 in view of U.S. Patent No. 5,802,361 to Katherine Wang ("Wang"). The reasons for the rejection are set forth in the Office Action and therefore not repeated. The rejection is traversed and reconsideration is requested.

Wang generally describes side information files 115 including files that are specific to the analysis of video, and those that apply to both video and individual still images. See column 8, lines 20-40. However, the cited reference fails to teach or suggest, "a ground information providing part providing each data with ground information visualizing grounds of the classification and the arrangement of the data," as recited in independent claim 1. Rather, the side information of Wang is held for the purpose of ranking and re-ranking with one image selected, and is not information to be displayed. The side information of image information in Wang corresponds to a vector of tens of dimensions and is not intended to be visualized as such.

In addition, the recitations of the dependent claims of the presently claimed invention are also patentable in view of the reference cited. For instance, referring to dependent claims 3 and 4, Wang fails to teach or suggest, "wherein the classifying and arranging part conducts **self-organization mapping processing** in the classification and the arrangement of the data so that the data having similar feature values are disposed close to each other." Emphasis added. Rather, column 24, lines 55-62, and column 24, line 64 to column 25, line 3 of Wang generally describe that images close to a query are retrieved successively, and neither teaches or suggests the self-organization mapping processing of claims 3 and 4.

Furthermore, in the Office Action, it is correctly recognized that Wang fails to teach or suggest, "a display part displaying each data together with corresponding ground information in accordance with the classification and the arrangement of the data," as recited in independent claim 1, however, to arrive to this recitations, the following is conclusively asserted "it would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to modify

the teachings of Wang to not only display the image (data), but also to include the side information associated with the image (ground information) as Wang is already storing ~~them~~ both of them together..." However, the MPEP as well as recent case law further supports this requirement of any reliance of Official Notice be specific and detailed as to what is being relied upon and how.

Regarding Official Notice, on remand from the Supreme Court, the Federal Circuit in In re Zurko, 258 F.3d 1379, 59 USPQ2d 1693 (Fed. Cir. 2001), reversed the decision of the Board of Patent Appeals and Interferences ("Board") to uphold a rejection under 35 USC §103 for lack of substantial evidence. Specifically, in Zurko and other recent decisions, the court criticized the USPTO's, both at the Board and Examiner level, reliance on "basic knowledge" or "common sense" to support an obviousness rejection, where there was no evidentiary support in the record for such a finding.

While "official notice" may be relied upon, as noted in MPEP §2144.03, these circumstances should be rare when an application is under final rejection or action under 37 CFR §1.113. Official Notice unsupported by documentary evidence should be only be taken by the Examiner where the facts asserted to be well known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known and only when such facts are of notorious character and serve only to "fill in the gaps" which might exist in the evidentiary showing made by the Examiner to support a particular ground of rejection. **Further, the applicant should be presented with the explicit basis on which the Examiner regards the matter as subject to official notice sufficient to allow the applicant a proper opportunity to challenge that assertion.**

It is improper to merely deem something obvious without any teaching/suggestion, or the taking of Judicial Notice. If the U.S. Patent and Trademark Office wishes to take Judicial Notice that the proposed structural and functional modification is notoriously well known, it is respectfully requested that supporting evidence be provided. **The Federal Circuit has cautioned that an Examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed.** In re Rouffet, 47 USPQ2d 1453, 1458 (Fed. Cir. 1998).

Thus, both the MPEP and recent case law specifically detail that whenever Official Notice is taken, which should be on very rare occasions, the Office Action must provide the explicit support for the reliance on Official Notice "to allow the applicant a proper opportunity to challenge that assertion."

The outstanding Office Action has provided no explicit support of what the purported well-known features encompass or how the determination of those features as being well known has been determined. Rather, the Office Action only cites Wang, without pointing how the

claimed features have been determined as being well known. Thus, it is respectfully requested that evidence be provided, such as a reference or an Affidavit signed by the Examiner of record, showing the features that Wang lacks and providing the motivation to combine Wang and such evidence to arrive to the present claimed invention.

Only the present invention sets forth all the claimed features, as well as the motivation for combining the same. The outstanding rejection would appear to have taken the teachings of the present invention such that a combination of "well known features" and Wang, as set forth in the Office Action, would disclose the presently claimed invention. See W.L. Gore & Assocs. Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983). It is respectfully requested that independent claims 1 and 45 and related dependent claims be allowed.

Likewise, the Office Action refers to similar portions of the cited references to reject independent claims 10 and 11 as the portions of the cited references previously discussed and distinguished from the claimed features of independent claim 1. The arguments presented above supporting the patentability of independent claim 1 in view of Wang are incorporated herein to support the patentability of independent claims 10 and 11. Accordingly, Wang fails to teach or suggest all the claimed features of independent claims 1, 10, and 11. It is respectfully requested that independent claims 1, 10, and 11 and related dependent claims be allowed.

CONCLUSION:

In accordance with the foregoing, it is respectfully submitted that all outstanding objections and rejections have been overcome and/or rendered moot, and further, that all pending claims patentably distinguish over the prior art. Thus, there being no further outstanding objections or rejections, the application is submitted as being in condition for allowance, which action is earnestly solicited.

If the Examiner has any remaining issues to be addressed, it is believed that prosecution can be expedited by the Examiner contacting the undersigned attorney for a telephone interview to discuss resolution of such issues.

If there are any underpayments or overpayments of fees associated with the filing of this Amendment, please charge and/or credit the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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